

**STATE OF MICHIGAN
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
ADMINISTRATIVE HEARINGS FOR THE
DEPARTMENT OF HUMAN SERVICES**

IN THE MATTER OF:

[REDACTED]

Reg. No.: 15-001461
Issue No.: 2008
Case No.: [REDACTED]
Hearing Date: March 5, 2015
County: Ionia

ADMINISTRATIVE LAW JUDGE: Vicki Armstrong

HEARING DECISION

Following Claimant's request for a hearing, this matter is before the undersigned Administrative Law Judge pursuant to MCL 400.9 and 400.37; 7 CFR 273.15 to 273.18; 42 CFR 431.200 to 431.250; 45 CFR 99.1 to 99.33; and 45 CFR 205.10. After due notice, an in-person hearing was held on March 5, 2015, from Ionia, Michigan. Claimant did not attend. Claimant's authorized representative, Attorney [REDACTED] personally appeared and testified. Participants on behalf of the Department of Human Services (Department) included Eligibility Specialist [REDACTED] and Assistant Attorney General [REDACTED].

ISSUE

Whether the Department properly imposed the Divestment penalty from November 2, 2014, through December 6, 2014?

FINDINGS OF FACT

The Administrative Law Judge, based on the competent, material, and substantial evidence on the whole record, finds as material fact:

1. Claimant is a MA recipient and resides in a long-term care facility.
2. On November 24, 2014, the Department received an MA application, submitted by Claimant's Authorized Representative.
3. During the look-back period, Claimant transferred monies to [REDACTED].
4. The Department considered these transfers a divestment resulting in the imposition of a divestment penalty period based on a divestment of \$ [REDACTED].
5. Claimant was approved for Medicaid effective November 1, 2014, however long-term care would not be paid during the one month and 6 day divestment penalty period.

6. On December 16, 2014, the Department sent a Health Care Coverage Determination Notice, informing Claimant he was approved for a \$ [REDACTED] monthly patient pay from 11/1/2014-12/31/2014, and a \$ [REDACTED] monthly patient pay beginning 1/1/2015 - ongoing. In addition, the Medicare Savings Program would begin 12/1/2014 - ongoing.
7. On January 20, 2015, the Department received the Authorized Representative's timely written request for hearing.
8. On February 4, 2015, the Department mailed Claimant a Benefit Notice, replacing the Health Care Coverage Determination Notice of 12/16/2014. The Benefit Notice informed Claimant he was eligible for Medicaid with a patient pay of \$ [REDACTED] beginning 11/1/2014 – 2/28/2015. Beginning 3/1/2015, Claimant was to begin paying \$ [REDACTED] toward his hospital/long term care, and was still eligible for Medicaid. Medicaid would not pay for long-term care and home/community-based services from 11/1/2014 through 12/6/2014, or the Medicare Savings Program 3/1/2015 - ongoing.

CONCLUSIONS OF LAW

Department policies are contained in the Department of Human Services Bridges Administrative Manual (BAM), Department of Human Services Bridges Eligibility Manual (BEM), Department of Human Services Reference Tables Manual (RFT), and Department of Human Services Emergency Relief Manual (ERM).

The Medical Assistance (MA) program is established by Title XIX of the Social Security Act, 42 USC 1396-1396w-5; 42 USC 1315; the Affordable Care Act of 2010, the collective term for the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152; and 42 CFR 430.10-.25. The Department (formerly known as the Family Independence Agency) administers the MA program pursuant to 42 CFR 435, MCL 400.10, and MCL 400.105-.112k.

The goal of the Medicaid program is to ensure that essential health care services are made available to those who otherwise could not afford them. BEM 105, p 1 (10/1/2014). Medicaid is also known as Medical Assistance ("MA"). *Id.* The Medicaid program is comprised of several categories; one category is for FIP recipients while another is for Supplemental Security Income ("SSI") recipients. *Id.* Programs for individuals not receiving FIP or SSI are based on eligibility factors in either the FIP or SSI program thus are categorized as either FIP-related or SSI-related. *Id.* To receive MA under an SSI-related category, the person must be aged (65 or older), blind, disabled, entitled to Medicare or formally blind or disabled. *Id.* FIP- and SSI-related Group 2 eligibility is possible even when net income exceeds the income limit because incurred medical expenses are considered. *Id.* Eligibility is determined on a calendar month basis. BEM 105, p 2 (10/1/2014). MA income eligibility exists for the calendar month tested when there is no excess income or allowable medical expenses that equal or exceed the excess income. BEM 545, p 1 (1/1/2015).

Divestment results in a penalty period in MA, not ineligibility. BEM 405, p 1 (1/1/2015). During the penalty period, MA will not pay for long-term care services. *Id.* Divestment means a transfer of a resource by a client (or spouse) that is within the look-back period and is transferred for less than fair market value ("FMV"). *Id.* Transferring a resource means giving up all or partial ownership in, or rights to, a resource. BEM 405, p 2 (1/1/2015). Resource means all the client's (and spouse's) assets and income. *Id.*; 20 CFR 416.1201. Less than FMV means the compensation received in return for a resource was worth less than the FMV of the resource. BEM 405, p 6 (1/1/2015). When a person gives up the right to receive income, the FMV is the total amount of income the person could have expected to receive. *Id.*

The first step in determining the period of time that transfers can be looked at for divestment is to determine the baseline date. BEM 405, p 1 (1/1/2015). The baseline date (applicable in this case) is the date which the client was an MA applicant and in a long-term care facility. *Id.* After the baseline date is established, the look-back period is established. BEM 405. The look-back period is 60 months for all transfers made after February 8, 2006. BEM 405, p 5 (1/1/2015). Transfers made by anyone acting in place of, on behalf of, at the request of, or at the direction of the client/spouse during the look-back period are considered. *Id.*

In this case, Claimant transferred \$ [REDACTED] to [REDACTED]. Claimant proposes two alternative theories as to why this transfer was not divestment. First, that Claimant owed the monies based on the 24 month residential lease he signed on the January 14, 2014. Despite this argument, the argument fails based on paragraph 5 of the residential lease (See Claimant's Exhibit, page 2).

5. Early Termination/Cancellation of Lease. Notwithstanding any other provisions to the contrary, Landlord will agree to early termination of this Lease prior to its termination date (subject to all other rights and remedies which are permitted by law against Resident for obligations other than rent), if the Resident fully complies with the following:

- A. At least six (6) months of prior rent has been paid in full.
- B. The Resident gives Landlord 60 Day Advance Written Notice of the date he/she intends to vacate and simultaneously pays a lease termination fee of two and one-half (2 ½) months rent:
- C. The Resident pays in full all rent, including late fees, maintenance and repair costs, legal fees, court costs, outstanding utility bills and any costs associated with damages to the Premises, which are due and owing at the time possession is turned over to Landlord. Resident shall remain liable for any damages, in excess of Resident's security deposit, found at or on the Premises after possession has been turned over to Landlord and an inspection has been completed.

According to the lease, rent was \$ [REDACTED] a month. Prior to the MA application date, Claimant had lived in the apartment for over six months and could afford to pay two and a half month's rent in order to terminate the lease, based on the \$ [REDACTED] transfer to [REDACTED]. While Claimant was not actually in the apartment for six months prior to his stroke, his wife was still living in the apartment, and the lease could have

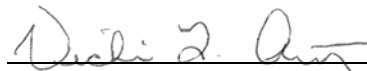
been terminated early, without Claimant transferring the \$ [REDACTED] to [REDACTED]
[REDACTED]

Secondly, Claimant argued he had to transfer the \$ [REDACTED] to [REDACTED] in accord with the Judgment of Divorce entered into on October 31, 2014, or face contempt of court. However, the Judgment of Divorce was based on an agreement by all parties on all issue contained within the Judgment of Divorce. This indicates Claimant offered to transfer the \$ [REDACTED] to assure his wife (now ex-wife) continued to live rent free in the apartment. Therefore, the second argument also fails.

The Administrative Law Judge, based on the above Findings of Fact and Conclusions of Law, and for the reasons stated on the record, if any, finds that the Department acted in accordance with Department policy when it found a divestment in this case.

DECISION AND ORDER

Accordingly, the Department's decision is **AFFIRMED**.



Vicki Armstrong
Administrative Law Judge
for Nick Lyon, Interim Director
Department of Human Services

Date Signed: **3/25/2015**

Date Mailed: **3/25/2015**

VLA/las

NOTICE OF APPEAL: A party may appeal this Hearing Decision in the circuit court in the county in which he/she resides, or the circuit court in Ingham County, within 30 days of the receipt date.

A party may request a rehearing or reconsideration of this Hearing Decision from the Michigan Administrative Hearing System (MAHS) within 30 days of the mailing date of this Hearing Decision, or MAHS **MAY** order a rehearing or reconsideration on its own motion.

MAHS **MAY** grant a party's Request for Rehearing or Reconsideration when one of the following exists:

- Newly discovered evidence that existed at the time of the original hearing that could affect the outcome of the original hearing decision;
- Misapplication of manual policy or law in the hearing decision which led to a wrong conclusion;

- Typographical, mathematical or other obvious error in the hearing decision that affects the rights of the client;
- Failure of the ALJ to address in the hearing decision relevant issues raised in the hearing request.

The party requesting a rehearing or reconsideration must specify all reasons for the request. MAHS will not review any response to a request for rehearing/reconsideration. A request must be *received* in MAHS within 30 days of the date this Hearing Decision is mailed.

A written request may be faxed or mailed to MAHS. If submitted by fax, the written request must be faxed to (517) 335-6088 and be labeled as follows:

Attention: MAHS Rehearing/Reconsideration Request

If submitted by mail, the written request must be addressed as follows:

Michigan Administrative Hearings
Reconsideration/Rehearing Request
P.O. Box 30639
Lansing, Michigan 48909-8139

cc:

